



## And The Defense Wins

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[Mark Yagerman](#), a longtime DRI member and equity owner of **Smith Mazure Director Wilkins Young & Yagerman P.C.** in New York City, recently obtained a defense verdict in Kings County on behalf of the New York City Transit Authority in the case of *Pavlina Kleyman v. New York City Transit Authority*, Index No. 33678/08. The subject accident occurred at the Neck Road Station in Kings County on July 24, 2004. The plaintiff claimed that she tripped and fell on a defective platform and sustained significant knee injuries, which included a comminuted fracture of the left knee resulting in a semi patellectomy, *i.e.*, excision of the half of the distal pole of the patella.

The plaintiff testified that it was raining at the time of the accident. She had entered the elevated train station at Neck Road and was waiting for the train on the subway platform just prior to the accident. The train came into the station, Manhattan bound. She was walking to the train to board and she allegedly fell on a defect on the platform, causing her to fall partly into the train door. The Russian-speaking plaintiff alleged that passengers brought her into the train. After being helped off the train at the Kings Highway Station, she called the police and an ambulance for help.

The plaintiff introduced photographs that she claimed were the scene of the occurrence, showing a major defect in the area of the platform near the platform's edge. The case was tried before a jury in Kings County. Presiding Judge Partnow allowed the photographs in evidence as fair and accurate representations of the scene of the occurrence. The New York City Transit Authority disputed plaintiff's claim by introducing evidence from a police officer who testified that the plaintiff stated she fell in the train on a wet condition on the floor. The plaintiff disputed talking to police, as she speaks Russian.

A Kings County jury deliberated for 45 minutes and unanimously found that the New York City Transit Authority was not negligent. Post trial motions by the plaintiff to set aside the verdict were denied by Justice Partnow.

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